IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1579 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANHARKUMAR RAMANBHAI NAYAK

Versus

DEPUTY EXECUTIVE ENGINEER

Appearance:

1. Special Civil Application No. 1579 of 2002

MRS SANGEETA N PAHWA for Petitioner No. 1

MR MAYANK VORA for Respondent No. 1

MR RV DESAI, AGP, for Respondent No. 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 07/10/2002

ORAL JUDGEMENT

Leave to make corrections in the cause title.

Respondent No.2 shall be described as State of Gujarat

(notice to be served through the Secretary, Panchayat, Rural Housing and Rural Development Department, Sachivalaya, Gandhinagar).

Mr RV Desai, AGP appears for respondent No.2 which is correctly mentioned today.

2. The application made by the petitioner for compassionate appointment on 24-6-1999 has been dismissed by the respondent-authorities on 5-3-2000 (Ann. C) on the ground that the amount of family pension being received by the family, more particularly, the mother of the deceased exceeds the income limit fixed by the Government for the purpose of compassionate appointment.

3. The contention raised by the petitioner is that if family pension is not included in the income to be considered for the purpose of compassionate appointment, the income of the family will not exceed the prescribed limit. It is also contended that as per the Government Resolution dated 10-3-2000 the income limit has been done away with. Reliance is also placed on the decision dated 15-6-2001 of this Court in Special Civil Application No.799 of 2001 and other decisions.

Today the petition has come up for final disposal.

4. At the hearing of the petition, the learned counsel for the petitioner relies on the Government Resolution dated 7-9-2002 laying down that the Government Resolution dated 10-3-2000 doing away with the income limit in matters of compassionate appointment shall be given effect from 1-1-1996.

5. In view of the aforesaid resolution, it is clear that in cases where deceased expired on or after 1-1-1996, the compassionate appointment cannot be refused on the ground of the income of the families exceeding the prescribed limit as no limit would now be applicable.

6. In view of the statement being made by the learned counsel for the petitioner that the death of the father of the petitioner took place while holding office and on or after 1-1-1996 i.e. on 19-6-1999, it is obvious that the present case will be governed by the Government Resolution dated 10-3-2000 read with the Government Resolution dated 7-9-2002.

7. In view of the above discussion, this petition is allowed. The impugned decision rejecting the application

of the petitioner for compassionate appointment on the ground that the income of the family exceeds the prescribed limit is quashed and set aside, and the respondents are directed to re-consider the case of the petitioner on the basis of the aforesaid Government Resolution dated 10-3-2000 read with the Government Resolution dated 7-9-2002. This direction shall be complied with within two months from the date of receipt of the writ of this Court or a certified copy of this judgment, whichever is earlier.

Rule is made absolute with no order as to costs.

Direct service is permitted.

(M.S. Shah,J)

zgs/-